1952. K File No. O Entertainments/52

Legal DEPARTMENT

A · BRANCH

816

Subject:— Opinions under the Bombay Entertainments Duty Act 1923

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Legal Department.

R.I. No-25026-0/4-12-51

Submitted with reference to the note of the Home Department (Political) at p. 7-8 ante. This reference arises in regard to the last paragraph of the R.L.A.'s opinion No. 18640 dated 21-11-1951, and with reference to this the Home Department has raised a presumption that a performance licence is not required even if extra fees are charged to members or if they bring guests on payment, on the ground that rule 38 only as applies to a public performance to which the xx public are admitted on payment of money. The R.L.A. has been requested to confirm this presumption.

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U.R. to H.D., No. 319; dated the 11th January 1952.

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The question raised for consideration is whether when entertainment duty has been paid in respect of an entertainment but an application for refund has not been made to the Commissioner of Police or the District Magistrate, as the case may be, within 15 days from the date of the entertainment as required by sub-rule (2) of rule 19 of the rules made under section 7 of the Bombay Entertainments Duty Act, 1923, it would be possible for Government to direct the refund of the amount under any provision of the Act or the Rules.

2. Sub-rule (2) of rule 19 of the Rules made under section 7 of the Bombay Entertainments Duty Act, 1923, provides that any person claiming under sub-section (2) of section 6, a refund of the entertainment duty shall present an application for such refund to the Commissioner of Police or the District Magistrate, as the case may be, within fifteen days from the date of the entertainment. An application for refund not presented within such period shall be rejected. As stated in R. L. A.'s opinion No. 9367 dated 5-6-1952, the Act expressly provides for refund only in one case viz., if the circumstances specified in sub-section (2) of section 6 are in existence to the satisfaction of the Commissioner of Police or the District Magistrate. That section does not reserve any power in Government to grant a refund. Moreover, even the Commissioner of Police and the District Magistrate are bound to reject an application for refund if made after 15 days from the entertainment. The provisions of rules 19 are mandatory and there is no power in the rules also under which Government can direct the waiver of the said rule. The reply to the question raised is, therefore, in the negative.

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U.P. to R.D., No. 11478; dated the 11th July 1952.

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Sub-sections (1) and (3) of section 6 of the Bombay Entertainments Duty Act, 1923 provide for exemption while sub-section (8) provides for refund. Exemption is distinct from refund. Exemption exempts from initial payment; while refund which presupposes that payment has been made can be granted only after payment. The Act expressly provides for refund only in one case. It would not, therefore, be competent to grant refund under the Act in any other cases. In accordance with the general constitutional limitations in respect of finance, refund of money already paid into the consolidated fund is not permissible except in accordance with the procedure for appropriation (Article 204 (3) of the Constitution).

Attention is, however, invited to the R. L. A.'s opinion No. 8438, dated the 29th May 1951 (copy enclosed).

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U.R. to R.D., No. 9567, dated the 5th June 1952.

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Bombay Entertainments Duty Act, 1923, section 7(2).

The provisions of section 5 of the Bombay Entertainments Duty Act, 1923 are not applicable if the duty is payable in accordance with the provisions of sub-section (2) of section 4 (vide section 4(3) of the Act). In the present case, the the organizers of the Fair appear appear to have been given permission to pay the duty in accordance with section 4(2) of the Act (Rule 23A applies only when permission is given under section 4(2) of the Act) and in the circumstances no prosecution under section 5 of the Act would be feasible for their contravention of Rules 23A and 23B.

Under sub-section (2) of section 7, however, it is provided that if any person acts in contravention of, or fails to comply with, any rules, he shall, on convictionk before a Magistrate, be liable in respect of each offence to a fine not exceeding five hundred rupees. By issuing pink complimentary tickets admitting at a time a maximum number of six persons the Organizers have contravened Rule 23B and by not numbering the white slips which were in the nature of complimentary tickets they have contravened Rule 23A and for these breaches a prosecution would be feasible. Before a prosecution is launched Government may, however, consult the Ministry of Commerce, and Industry of the Government of India under whose patronage the exhibition was arranged. If a prosecution is eventually decided upon the facts should be carefully checked and the case again submitted to R. L. A. for scrutiny.

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U.R. to R.D., No. 13045; dated the 7th August, 1958.

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It appears that the Lokshahi Yuvak Sangh of Jalgaon exhibited films known as "Moscow Parade" and "People's Avenger" at the Rajkamal Takies, Jalgaon on 10th and 11th May 1958. Invitation cards (p.5 ante) for these shows were issued and distributed, it appears, free of charge; but admission was also thrown open to persons without cards. Two persons, viz., Shri Laxman Chindu Dhande and Shri Puna Chudaman Halde of Jalgaon, whom are members of Rashtriya Mill Mazdoor Sangh, a rival organization, have however stated that the invitation cards were sold to them and that they purchased them for Re. 0-10-6, and 0-5-0 each respectively. Shri. A.D.Divekar, Government Labour Officer, who was given two cards for the show has also stated that he paid Rs. 1-5-0 for them; but not as the price of the invitaton cards. He states that he was told that the show was free; but when he asked whether he had to pay anything, he was told that he may pay Re. 0-10-6 for each card. On these facts, the District Magistrate, East Khandesh, considers that the cards were sold wherever possible and that the signatories to the invitation cards have violated the Rules framed by the District Magistrate under section 33(1)(x) of the Bombay Police Act, 1951 and thereby rendered themselves liable to prosecution under section 131(ii). He also stated that no entertainment duty is paid and thereby also the signatories contravened section 4 of the Bombay Entertainments Duty Act, 1923 and committed an offence under section [illegible]. The Remembrancer of Legal Affairs in these circumstances is requested to advise whether the persons concerned can be prosecuted on the strength of the evidence available.

2. There is no reliable evidence in this case in support of the allegation that the passes were sold wherever possible. The statements of Messrs. Dhande and Halde will not alone be sufficient to prove this allegation. Shri. Dhande states that he purchased the card from Shri. Bhaleroo

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but Shri. Bhalerao denies having sold anything to him. As regards Halde he states that he does not know from whom he purchased the card; but alleges to have paid 5 annas for it. The oral evidence of these persons, who are allegedly members of a rival organization, will not be sufficient to convince the court that the cards were in fact sold to them. On the other hand the evidence of Shri. Divekar is clear. He states that he was definitely told that the show was free and tough he admits to have paid Rs. 1-5-0, he makes it clear that the amount wadnot paid as price of the tickets. The evidence of the Manager of the Theatre goes to know that the tickets were not sold and the show was open to all those who cared to come. In view of these facts, it would be difficult to establish that the tickets were sold. Under clause (x) of section 33(1) of the Bombay Police Act, 1951, the District Magistrate can make rules or orders for "regulation or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement." A breach of these regulations is publishable under section 131(a) (ii). In the present case, however, there was no sale and these provisions are not attracted and no prosecution under these provisions would be feasible.

3. It would hot be competent to prosecute the persons concerned under the Bombay Entertainments Duty Act, 1923. Section 5 of that Act enacts that if any person is admitted for payment to any place of entertainment and provisions of section 4 are not complied with, the proprietor of the entertainment shall be liable for penalty prescribed. Before provisions of this section can be attracted, the admission to the entertainment must be "for payment." As the show was free, it is clear that the admission was not for payment and no offence can be deemed to have been committed in this case under the Bombay Entertainments Duty Act, 1923.

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U.R. to R.D., No. 888-Comfl.; dated the 8th September, 1952.

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Bombay Entertainments Duty Act, 1923.

Section 6(3).

Exemption of 4 anna-tickets.

Section 6(3) of the Bombay Entertainments Duty Act, 1923, enacts that the State Government may, by general or special order, exempt any entertainment or class of entertainments from liability to entertainments duty. Under these provisions it is competent to Government to exempt the whole entertainment or a class of entertainments from duty but not tickets of a particular denomination. In view of this position, it would not be legally feasible to exempt the four anna tickets in the Dangs District without extending the exemption to other tickets also. (Cf. R. L. A.'s opinion No. 4414 dated the 17-3-1951).

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U.R. to R.D., No. 12689; dated the 31st July 1952.

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Entertainments Duty on lectures.

Entertainments Duty Act, 1923. Section 2(a). R.L.A.'s opinions No. 7755 dated 21.10.1938 and No. 325/Confl., dated 31-10-1945.

It appears that Shri G.P.Parchure of the Parchure Prakashan Mandir has arranged for four lectures by Shri V.D.Savarkar. These lectures will be on the "Four Golden Periods in the Bharatiya History" and they will be divided as follows :-

(1) Chandragupta.

(2) Vikramaditya.

(3) Shivaji.

(4) Recent history upto 1947.

Shri Savarkar will be speaking extempore and the price of admission to these lecture will be Rs. 0-8-0 per person and the lectures will be held in the Brahman Sabha Hall, Girgaum, which has a seating capacity of 400 to 500. Out of the total collections, which are expected to be Rs. 200 to Rs. 250 per lecture, Rs. 100 will be given to Shri Savarkar and the rest utilised for the rent of the hall, loudspeaker and other arrangements. Shri Savarkar proposes to utilise the amount given to him for the Abhinav Bharat Mandir at Nasik which he is going to erect as a monumnet to the persons who have suffered in thenational struggle for independence. It appears that admission to these lecture will be restricted to members only. The question raised for the R.L.A.'s consideration is whether these lectures would be entertainment within the meaning of the Bombay Entertainments Duty Act, 1923, so that the duty can be levied onpayments for admission to these lectures.

"Entertainment" as defined in section 2(a) of the Bombay Entertainments Duty Act, 1923, includes any exhibition, performance, amuse-

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ment, game or sport to which persons are admitted for payment. It is no doubt true that this definition is inclusive but the lectures proposed to be given by Shri Savarkar would neither be exhibition nor performance nor amusement nor game nor sport included in this definition. Secretary, Finance Department, appears to be of the view that the lecture would be a performance. "performance" according to the dictionary meaning means execution (of command, etc.); carrying out, doing; notable feat; performing of paly or public exhibition, as there are two performances a day, the afternoon performance, etc. (see Concise Oxford Dictionary). "Performance" as defined in the Copyright Act means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument. Apparently, a lecture would not be a performance. Consequently, the view taken by Secretary, Finance Department, that a lecture would be a performance included in the definition of "entertainment" does not appear to be correct.

In his opinion No. 7755, dated 21st October 1938, the R. L. A. opined that a lecture would fall under the meaning of "entertainment" as something which affords interest. That opinion presumably was based on the decision in Reid v. Wilson and Ward (1895, 1 Q.B. 315). The R.L.A. in his opinion No. 325-Confl., dated 31st October 1945 held that the All India Congress Committee Session was not an entertainment within the meaning of section 2(a) of the Entertainments Duty Act, 1923. In expressing that opinion, the R.L.A. took into consideration the decision in Reid v. Wilson and Ward(1895 1 Q. B. 315)and, relying on the decision in Baxter v. Langley (1869, L.R. 4 C.P. 21), held that a discourse on a serious subject would not ordinarily be an entertainment and amusement or diversion would be the overriding intention of an entertainment as contemplated by

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the Act. Lectures on the four golden periods proposed tobe given by Shri V.D.Savarkar would have certainly educational value but they would afford neither amusement nor any diversion to those who hear them. Consequently, these lectures cannot be considered as entertainments within the meaning of section 2(s) of the Bombay Entertainments Duty Act and entertainment duty would not be leviable on the feesg for admission to these lectures.

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E.R. to R.D., No. 19445/A; dated the 21st November 1952.

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